



May 24, 2001

Ms. Jennifer McNeil Reck
Hilgers & Watkins
Attorneys at Law
P.O. Box 2063
Austin, Texas 78768

OR2001-2150

Dear Ms. Reck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147622.

The Austin-Travis County Mental Health-Mental Retardation Center (the "center"), which you represent, received a request for any written material pertaining to an alleged discrimination complaint. You state that you have released documents pertaining to the requestor's employment history with the center pursuant to a previous open records request. You claim, however, that the submitted information is confidential under sections 161.032 and 576.005 of the Health and Safety Code and must be withheld from disclosure. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information consists of a completed investigation, and normally must be released pursuant to section 552.022(a)(1) of the Government Code. Section 552.022 makes "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" public information unless expressly made confidential under other law or "except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses statutory confidentiality provisions. You contend that the submitted information is confidential under section 161.032 of the Health and Safety Code. Section 161.032 makes confidential the "records and proceedings of a medical committee." Under section 161.031(a) of the Health and Safety Code, a "medical committee" includes any

committee of a hospital, medical organization, university medical school or health science center, or extended care facility. It also includes an ad hoc committee appointed to conduct a specific investigation as well as a committee established under the bylaws or rules of the organization. Health & Safety Code § 161.031(b).

While the records and proceedings of a medical committee are confidential, *Id.* § 161.032(a), the confidentiality does not extend to “records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.” *Id.* § 161.032(c); Open Records Decision No. 591 (1991). Documents generated by a committee in order to conduct open and thorough review, as well as documents prepared by or at the direction of the committee for committee purposes, are confidential. *Memorial Hosp.-The Woodlands v. McCown*, 927 S.W.2d 1, 9 (Tex. 1996); *Barnes v. Whittington*, 751 S.W.2d 493, 496 (Tex. 1988); *Jordan v. Court of Appeals for Fourth Supreme Judicial Dist.*, 701 S.W.2d 644, 648 (Tex. 1985). The *Jordan* court found that the privilege extends to “minutes of committee meetings, correspondence between members relating to the deliberation process and any final committee product, such as recommendations.” *Jordan*, 701 S.W.2d at 648.

You state that the requestor was involved in an incident at the center that was subsequently investigated by a standing committee that was established, pursuant to center rules, to handle investigations of health care providers. Further, our review of the submitted information indicates that the submitted investigation report was presented to the members of the center’s Investigation Review Committee for purposes of reviewing the allegations regarding the incident. Based on your representations and our review of submitted information, we agree that most of the submitted information consists of records or proceedings of a medical committee that are made confidential by section 161.032 of the Health and Safety Code. *See Texarkana Mem’l Hosp., Inc. v. Jones*, 551 S.W.2d 33 (Tex. 1977). Therefore, you must withhold the majority of the submitted information pursuant to section 552.101 of the Government Code.

We note, however, that Exhibit C to the submitted investigation report was not generated by or at the direction of a medical committee. Therefore, Exhibit C is not confidential under section 161.032 of the Health and Safety Code.

As you also assert that the submitted information is excepted under section 576.005 of the Health and Safety Code, we will address this argument with respect to Exhibit C to the submitted investigation report. Section 576.005 of the Health and Safety Code provides that “[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.” Health & Safety Code § 576.005. You do not advise us that the submitted records are subject to disclosure under any other state law, nor are we aware of such a law. Accordingly, Exhibit C must be withheld as confidential under section 576.005 of the Health and Safety Code. *See* Open Records Decision No. 163 (1977) (construing predecessor statute).

To summarize: (1) with the exception of Exhibit C to the submitted investigation report, the submitted information is confidential under section 161.032 of the Health and Safety Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code; and (2) Exhibit C is confidential under section 576.005 of the Health and Safety Code and must also be withheld from disclosure pursuant to section 552.101.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen A. Eckerle".

Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 147622

Encl: Submitted documents

cc: Ms. Nancy Brennan McDonald
1202 Alguino Road
Austin, Texas 78757
(w/o enclosures)